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# State, Dep't of Bus. & Indus. v. TitleMax, 135 Nev. Adv. Op. 44 (Sept. 26, 2019)

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## STATUTORY INTERPRETATION: TITLE LOAN GRACE PERIODS

### **Summary**

In an en banc opinion, the Nevada Supreme Court answered whether title lender TitleMax's Grace Period Deferment Agreement ("GPPDA"), which applied to short-term, high-interest loans offered to Nevada consumers in 2014 and 2015, qualified as a true grace period under NRS 604A.210.<sup>2</sup> The Court concluded that the GPPDA was not a true grace period, but was instead an impermissible extension of the 210-day loans. The Court reasoned that the GPPDA was an extension because TitleMax charged borrowers additional interest during the extended period and thus violated NRS 604A.445, a statute enacted by the Nevada Legislature in part to protect consumers from predatory lending, by explicitly forbidding the charging of additional interest during grace periods.<sup>3</sup> Further, the Court concluded that TitleMax's violation was not willful, but was instead a reasonable interpretation of the pertinent statutes, and thus sanctions were inappropriate.

### **Background**

Under NRS 604A.445, Nevada title lenders are permitted to offer a 210-day loan that cannot be extended but can include a grace period of up to 210 additional days (equal to seven months).<sup>4</sup> During the grace period, title lenders are not permitted to charge additional interest.<sup>5</sup> In 2014 and 2015, TitleMax introduced the GPPDA and marketed it as an amendment to its 210-day title loans. Under the GPPDA, consumers paid seven months of interest-only payments and nothing toward their loans' principal, followed by an additional seven months of payments toward their principal and nothing toward interest. The initial seven months of interest-only payments was calculated based on a static principal balance, while the payments during the latter seven months (what TitleMax called a grace period) amortized the principal. The benefit of the GPPDA to consumers was that they could make smaller monthly payments. However, they ultimately paid more interest (in amount, not in rate) because the loan's life was prolonged and the interest amount was calculated based on a static principal balance, not on an amortizing principal that would decrease over time.

This case arose in 2014 after the Nevada Department of Business and Industry, Financial Institutions Division ("FID"), which is the regulating agency of Nevada title lenders, conducted an annual examination of TitleMax and concluded that the GPPDA violated the statute regulating 210-day title loans, NRS 604A.445, and the statute prohibiting grace periods, NRS 604A.210.<sup>6</sup> As a result, the FID rated TitleMax as "Needs Improvement" and instructed TitleMax to stop its GPPDA program. In response, TitleMax characterized the GPPDA as a true grace period that was friendly to consumers because it allowed them to make smaller monthly payments. The FID stood

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<sup>2</sup> NEV. REV. STAT. § 604A.210 (2005).

<sup>3</sup> NEV. REV. STAT. § 604A.445 (2007).

<sup>4</sup> *Id.*

<sup>5</sup> See NEV. REV. STAT. § 604A.070 (2007); NEV. REV. STAT. § 604A.210 (2005).

<sup>6</sup> NEV. REV. STAT. § 604A.445 (2007); NEV. REV. STAT. § 604A.210 (2005).

by its initial position that TitleMax's GPPDA was not permitted by statute. The FID then conducted a follow-up inspection in 2015 and because the GPPDA was still being offered, the FID lowered its rating of TitleMax to "Unsatisfactory."

Hoping to resolve the statutory interpretation issue with respect to NRS 604A.445 and 604A.210, TitleMax filed for declaratory relief in district court.<sup>7</sup> The FID also brought an administrative disciplinary action against TitleMax. An Administrative Law Judge ("ALJ") held a three-day hearing and agreed with the FID that the GPPDA violated NRS Chapter 604A because it charged consumers additional interest. The ALJ ordered TitleMax to cease and desist offering the GPPDA and sanctioned TitleMax for willfully violating NRS 604A.445 and NRS 604A.210.<sup>8</sup> The scope of the sanctions was that TitleMax could not collect, receive, or retain any principal, interest, or other charges from loans it issued after the date of the FID's 2014 inspection. In response, TitleMax petitioned the district court for judicial review of the ALJ's decision. Following its grant of TitleMax's petition, the district court vacated the ALJ's order and concluded that sanctions were inappropriate because TitleMax had not willfully violated the pertinent statutes. The FID then appealed the district court's decision.

## **Discussion**

### *TitleMax's GPPDA violates NRS Chapter 604A*

The Court discusses the differences between grace periods and extensions and concludes that the two are mutually exclusive and that grace periods are permitted for 210-day loans but extensions are not. TitleMax contends that the GPPDA was offered gratuitously to its customers and was thus a grace period, not an extension. TitleMax also argued that it was not charging its customers additional interest, because the interest rate was staying the same during the additional period of time. In contrast, the FID contends that all of the pertinent statutes must be read in conjunction with one another and that the GPPDA violates NRS 604A.445(3) because it involved charging an unamortized interest (thus increasing total interest costs to consumers).<sup>9</sup>

The Court examines the plain meaning of the statutes' language and finds that it is clear and unambiguous, so it does not look beyond the language of the statutes.<sup>10</sup> The Court agrees with FID's interpretation of the pertinent statutes and concludes that its interpretation fits within the plain statutory language. Because the GPPDA applied to title loans, it was governed by NRS 604A.445, NRS 604A.070, and NRS 604A.210, and these statutes must be read together.<sup>11</sup> The statutes' language shows that the GPPDA is an impermissible extension, not a grace period, because it charges impermissible additional interest. Whether interest is additional comes from the repayment schedule of the original loan; because monthly payments under the GPPDA did not reduce both the principal and the accruing interest according to an amortization schedule, consumers ultimately paid more in interest. The Court concludes that the GPPDA is a loan extension, not a grace period, under the plain language of the pertinent statutes and is thus

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> NEV. REV. STAT. § 604A.445(3) (2007).

<sup>10</sup> See *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983).

<sup>11</sup> NEV. REV. STAT. § 604A.445 (2007); NEV. REV. STAT. § 604A.070 (2007); NEV. REV. STAT. § 604A.210 (2005); Cf. *Albios v. Horizon Cmty., Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).

forbidden. Because the ALJ reached that same correct conclusion, the district court erred in granting TitleMax's petition for judicial review and vacating the ALJ's decision.

*Sanctions were not appropriate under NRS 604A.900 because TitleMax did not willfully violate NRS Chapter 604A*

Under NRS 604A.900(1), lenders, such as TitleMax, may not recover principal, interest, or fees from a loan if the lender willfully violated NRS Chapter 604A.<sup>12</sup> The ALJ concluded that TitleMax willfully violated NRS Chapter 604A, but the district court found the opposite and concluded that TitleMax's statutory interpretation was reasonable. The ALJ's reasoning was that TitleMax continued to offer the GPPDA even after the FID gave TitleMax the "Needs Improvement" rating and put TitleMax on notice about its potential violation of NRS Chapter 604A. To resolve this issue, the Court discusses the meaning of "willfully" and equates it to intentional, knowing, or voluntary.<sup>13</sup> The Court emphasizes that after the FID's 2014 inspection, TitleMax actively took steps to determine whether it was correctly interpreting the pertinent statutes. Such steps included consulting with legal counsel about the GPPDA, filing for declaratory relief to obtain clarification on the statutes' meaning, and making a good faith effort to resolve the issue with the FID. Because TitleMax demonstrated its dedication to interpreting the statutes correctly, this Court found that its violation of NRS Chapter 604A was not willful.

## **Conclusion**

When read together, NRS 604A.445 and 604A.210 do not permit title lenders to charge additional interest during a grace period following a 210-day loan period.<sup>14</sup> In order for it to qualify as a true grace period, the interest and principal must be fully amortized during the 210-day period, and no additional interest may be charged during the grace period. Because of this, the district court erred in granting TitleMax's petition to review the ALJ's decision. This Court reverses the district court in that respect. Further, because TitleMax's interpretation of the pertinent statutes was reasonable, sanctions are inappropriate, and this Court affirms the district court's findings that TitleMax's conduct was not willful.

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<sup>12</sup> NEV. REV. STAT. § 604A.900(1) (2005).

<sup>13</sup> See *In re Fine*, 116 Nev. 1001, 1021, 13 P.3d 400, 413 (2000) (quoting *Screws v. United States*, 325 U.S. 91, 101 (1945)).

<sup>14</sup> NEV. REV. STAT. § 604A.445 (2007); NEV. REV. STAT. § 604A.210 (2005).